

**Beech Branch Coal Company, Eldridge Coal Co., Inc., d/b/a Eldridge Brothers Coal Co., Poplar Branch Coal Co., Inc., and Parker Branch, Inc. and Donald Pittman.** Case 9-CA-15425

28 March 1984

# **SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 12 March 1982 the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding<sup>1</sup> finding, inter alia, that Respondent Beech Branch Coal Company violated Section 8(a)(1) of the Act by unlawfully discharging employees Larry Caudill, Harrad Clevins,<sup>2</sup> Robert Davis, Curtis Dean Sr., Cecil Lamb, Henry Quesenberry, and Ernest Vickers because they engaged in protected concerted activity. The Board ordered that the discriminatees be reinstated if the Respondents resumed the same or substantially similar business operations, and that they be made whole for any loss of earnings they suffered by reason of the discrimination practiced against them. On 16 March 1983 the United States Court of Appeals for the Sixth Circuit entered its judgment<sup>3</sup> enforcing the Board's Order.

Because of a dispute over the amount of backpay due the discriminatees under the terms of the Board's Order, the Regional Director for Region 9, on 7 September 1983, issued a backpay specification and notice of hearing alleging, inter alia, that Respondents Beech Branch; Eldridge Coal Co., d/b/a Eldridge Brothers Coal Co.; Poplar Branch Coal Co., Inc.; and Parker Branch, Inc. constitute a single integrated business enterprise and a single employer within the meaning of the Act. On 16 September 1983 the Respondents jointly filed an answer generally denying the allegations of the backpay specification.

Thereafter, on 3 October 1983 counsel for the General Counsel filed directly with the Board a "Motion for Summary Judgment and to Strike Respondent's Answer." Subsequently, on 5 October 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Re-

spondents did not file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in the case, the Board makes the following

## **Ruling on the Motion for Summary Judgment**

Section 102.54(b) and (c) of the National Labor Relations Board Rules and Regulations states:

### *(b) Contents of the answer to specification.—*

The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

*(c) Effect of failure to answer or to plead specifically and in detail to the specification.—*If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking

<sup>1</sup> 260 NLRB 907.

<sup>2</sup> We note that in the backpay specification the General Counsel refers to a person named "Howard Blevins" as being entitled to backpay from the Respondents. However, in the underlying unfair labor practice case, we ordered backpay for "Harrad Clevins" who was named as an alleged discriminatee in the complaint. We also use that name here to be consistent with the earlier case.

<sup>3</sup> *NLRB v. Beech Branch Coal Co.*, 709 F.2d 1505.

of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

The backpay specification duly served on the Respondents states that, pursuant to Section 102.54 of the Board's Rules and Regulations "Respondents shall, within 15 days from the date of this specification, file with the undersigned Regional Director an original and four (4) copies of (an) answer(s) to the specification. To the extent that such answer(s) fails to deny allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondents shall be precluded from introducing any evidence controverting them."

In his memorandum in support of the "Motion for Summary Judgment and to Strike Respondent's Answer," counsel for the General Counsel submits that the Respondents' answer fails to comply with the requirements of Section 102.54(b) and (c) of the Board's Rules and Regulations as to specificity. Therefore, counsel for the General Counsel requests that the Board deem the allegations of the backpay specification to be true and admitted without the need for the taking of evidence.

A copy of the answer filed by the Respondents is attached to the Motion for Summary Judgment as an exhibit. This answer simply denies all of the allegations contained in the backpay specification.

We agree with counsel for the General Counsel that the Respondents' answer constitutes a general denial, which fails to comply with the requirements of Section 102.54(b) and (c) as to those compliance matters within its knowledge. Thus, the answer does not set forth any basis for disputing the accuracy of the gross backpay figures contained in the specification or provide any alternative formula for computing the amounts of gross backpay owed. The answer also does not state that Respondent Beech Branch is without knowledge as to the wages and hours of the seven discriminatees, nor does the answer contain any explanation for the failure to deny specifically the gross backpay allegations as required by Section 102.54(c). Since Respondent Beech Branch has failed to deny specifically the gross backpay allegations or to explain adequately its failure to do so, Section 102.54(c) requires the these allegations be deemed to be admitted and true. Accordingly, we find them to be correct.

However, since we have held that a general denial of the allegations concerning the interim earnings in a backpay specification is sufficient under Section 102.54 to raise an issue warranting a

hearing,<sup>4</sup> we shall order a hearing to determine the net interim earnings of the seven discriminatees.

We shall also order a hearing on the issue of whether Respondents Eldridge Coal, Poplar Branch Coal, and Parker Branch together with Respondent Beech Branch constitute a single integrated business enterprise within the meaning of the Act. The General Counsel clearly has the burden as the party making this assertion to demonstrate proof of such integration.<sup>5</sup> However, since Respondents Eldridge Coal, Poplar Branch Coal, and Parker Branch were not made parties to the underlying unfair labor practice proceeding in this case, there is nothing in the record to support such a finding here. It thus is essential that these Respondents be given the opportunity to present evidence at a hearing concerning their liability for the unlawful conduct that Respondent Beech Branch committed. We therefore find that the Respondents' general denial of the allegation in the backpay specification regarding their status as a single employer is sufficient to require a hearing.<sup>6</sup>

Accordingly, we shall deny the General Counsel's Motion for Summary Judgment,<sup>7</sup> and we shall direct a hearing limited to determining the seven discriminatees' interim earnings and whether Respondents Eldridge Coal, Poplar Branch Coal, and Parker Branch constitute a single employer with Respondent Beech Branch and thus are also responsible for remedying the violations found in the underlying unfair labor practice case. However, since we have found that the general denial of the Respondents as to all other allegations in the backpay specification is insufficient under Section 102.54(b) and (c) of the Board's Rules and Regulations, and as no explanation or response to the Notice to Show Cause has been filed, we deem the Respondents to have admitted all other allegations in the backpay specification to be true.

### ORDER

It is hereby ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 9 for the purpose of issuing a notice of hearing and scheduling such hearing before an administrative law judge, which hearing shall be limited to taking evidence as to the seven discriminatees' net interim earnings, and as to the liability of Respondents El-

<sup>4</sup> *Dews Construction Corp.*, 246 NLRB 945 (1979).

<sup>5</sup> See, e.g., *Senco, Inc.*, 177 NLRB 882, 887 (1969).

<sup>6</sup> See *Sheet Metal Workers, Local Union No. 13 (Sheet Metal Contractors Assn.)*, 266 NLRB 59 (1983); and *Dews Construction Corp.*, supra.

<sup>7</sup> For the reasons set out herein, we also deny the General Counsel's motion to strike the Respondents' answer.

dridge Coal, Poplar Branch Coal, and Parker Branch for Respondent Beech Branch's unfair labor practices.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of

law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.